



DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Parts 701 and 760

[Docket ID: USDA-2021-0012]

RIN 0503-AA75

Pandemic Assistance Programs and Agricultural Disaster Assistance Programs

AGENCY: Commodity Credit Corporation (CCC), Farm Service Agency (FSA), and Office of the Secretary, Department of Agriculture (USDA).

ACTION: Technical correction.

SUMMARY: The Commodity Credit Corporation (CCC) and the Farm Service Agency (FSA) are making technical corrections to certain regulations that were published on January 11, 2023. These technical corrections will be made to: Phase 2 of the Emergency Relief Program (ERP); the Emergency Conservation Program (ECP); and the Emergency Forest Restoration Program (EFRP).

DATES: Effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: For ERP: Kathy Sayers; telephone: (202) 720-7649; email: kathy.sayers@usda.gov. For ECP and EFRP: Shanita Landon; telephone: (202) 690-1612; email: shanita.landon@usda.gov. Individuals who require alternative means for communication should contact the USDA Target Center at (202) 720-2600 (voice).

SUPPLEMENTARY INFORMATION:

ECP and EFRP

FSA announced changes made to ECP in a final rule on January 11, 2023 (88 FR 1862-8892). FSA inadvertently omitted a modification in 7 CFR 701.111 (applicable to ECP) and 7 CFR 701.211 (applicable to EFRP) to clarify sources of Federal funding that would be considered a duplicative payment. This correction amends the ECP regulation in 7 CFR

701.111(a) by striking “or State” and provides additional clarity to the EFRP regulation in 7 CFR 701.211 by inserting “Federal” throughout to describe the funding sources that would be considered a duplicative payment. In addition, we are correcting a typographical error by inserting the word “or” after paragraph (a)(3) to clarify the items in 7 CFR 701.111(a).

ERP Phase 2

FSA announced ERP Phase 2 in the final rule published on January 11, 2023. This document amends the ERP Phase 2 provisions in 7 CFR 760.1903 to address an unintended gap in how certain crop losses may be accounted for in a producer’s payment based on allowable gross revenue. This amendment provides a method for including in allowable gross revenue a value for certain crops, as determined by the Deputy Administrator, produced by a producer that do not generate revenue for the producer directly from the sale of the crop and that the producer uses within their ordinary operation. This would include, for example, wine makers who grow their own wine grapes and process those grapes into wine and producers of forage crops who store the crop to feed to livestock on their farm. These producers would not have revenue from the sale of the portion of their crop used for these purposes to include in their allowable gross revenue.

Wine grapes used to process grapes into wine and forage crops that are stored and fed to livestock have been determined by the Deputy Administrator to qualify for this method. The value of the eligible crop will be based on the producer’s actual production of the crop and a price for the crop determined by the producer based on the best available data for each crop, such as published price data for the crop¹ or the average price obtained by other producers in the area, as determined by the Deputy Administrator and published through guidance on FSA’s website.² This provision does not cover crops that were sold by a producer.

¹Published sources of price data that the Deputy Administrator may consider include, but are not limited to, Federal Crop Insurance Corporation-established prices, FSA-established National Crop Table prices, and National Agricultural Statistic Service prices.

²See <https://www.fsa.usda.gov/programs-and-services/emergency-relief/index>.

This document corrects § 760.1903(a)(4) and (5) to specify that benefits for the listed agricultural programs and CCC loans that are treated as income and reported to the IRS are included in a producer's allowable gross revenue if those benefits or CCC loans are for eligible crops. This document also corrects the regulation in § 760.1906 regarding the payment limitation for ERP Phase 2. As explained in the prior notice of funds availability for ERP Phase 1, published on May 18, 2022 (87 FR 30164–30172), and in the final rule that included ERP Phase 2, published on January 11, 2023, ERP is administered under 2 phases using shared payment limitations. As under similar FSA programs, a single ERP payment limitation will be applied based on the program year of a payment, regardless of whether the payment is issued under ERP Phase 1 or Phase 2. FSA will not combine payments from different program years for the purpose of payment limitation. This change is consistent with how FSA has implemented ERP and does not affect any payments that have been issued; it is being corrected in this document to reflect how ERP has been administered.

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List of Subjects

7 CFR Part 701

Disaster assistance, Environmental protection, Forests and forest products, Grant programs—agriculture, Grant programs—natural resources, Reporting and recordkeeping requirements, Rural areas, Soil conservation, Water resources, Wildlife.

7 CFR Part 760

Dairy products, Indemnity payments, Reporting and recordkeeping requirements.

PART 701—EMERGENCY CONSERVATION PROGRAM, EMERGENCY FOREST RESTORATION PROGRAM, AND CERTAIN RELATED PROGRAMS PREVIOUSLY ADMINISTERED UNDER THIS PART

1. The authority citation for part 701 continues to read as follows:

Authority: 16 U.S.C. 2201-2206; Sec. 101, Pub. L. 109-148, 119 Stat. 2747; and Pub. L. 111-212, 124 Stat. 2302.

Subpart B – Emergency Conservation Program

§ 701.111 [Amended]

2. Amend § 701.111 as follows:

- a. In paragraph (a) introductory text remove the words “or State”;
- b. In paragraph (a)(3) remove the “expenses.” and add “expenses; or” in its place; and
- c. In paragraph (a)(4) remove the words “other program” and add “other Federal program” in their place.

Subpart C – Emergency Forest Restoration Program

§ 701.211 [Amended]

- 3. Amend § 701.211 as follows:
 - a. In paragraph (a) remove the words “funding for” and add the words “federal funding for” in their place;
 - b. In paragraph (a)(5), remove the words “other program” and add “other Federal program” in their place; and
 - c. In paragraph (b), remove the words “duplicate funds” and add “duplicate Federal funds” in their place and remove the words “all programs” and add “all Federal programs” in their place.

PART 760—INDEMNITY PAYMENT PROGRAMS

- 4. The authority citation for part 760 continues to read as follows:

Authority: 7 U.S.C. 4501 and 1531; 16 U.S.C. 3801, note; 19 U.S.C. 2497; Title III, Pub. L. 109–234, 120 Stat. 474; Title IX, Pub. L. 110–28, 121 Stat. 211; Sec. 748, Pub. L. 111–80, 123 Stat. 2131; Title I, Pub. L. 115–123, 132 Stat. 65; Title I, Pub. L. 116–20, 133 Stat. 871; Division B, Title VII, Pub. L. 116–94, 133 Stat. 2658; and Division B, Title I, Pub. L. 117–43, 135 Stat. 344.

Subpart S—Emergency Relief Program

- 5. Amend § 760.1903 as follows:
 - a. In paragraph (a)(4), remove the word “under” and add “for eligible crops under” in its place;

- b. In paragraph (a)(5), remove the word “loans,” and add “loans for eligible crops,” in its place; and
- c. Add paragraph (j).

The addition reads as follows.

§ 760.1903 Allowable gross revenue.

* * * * *

(j) The Deputy Administrator may determine that certain eligible crops produced by a producer that do not generate revenue for the producer directly from the sale of the crop and that the producer uses within their ordinary operation may be included in a producer’s allowable gross revenue. This determination is at the Deputy Administrator’s discretion. The value of the eligible crop reported in the producer’s allowable gross revenue will be based on the producer’s actual production of the crop and a price for the crop based on the best available data for each crop, as determined by the Deputy Administrator and published through guidance on FSA’s website.

§ 760.1906 [Amended]

6. In paragraphs (a)(2), (b)(1)(ii), and (b)(2)(ii) of § 760.1906, remove the phrase “years 2021 and 2022”, and add “year 2021” in their places.

Zach Ducheneaux,
Executive Vice President,
Commodity Credit Corporation.
[FR Doc. 2023-12912 Filed: 6/16/2023 8:45 am; Publication Date: 6/20/2023]